Attorney General
Betty D. Montgomery

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April 18, 1996

Via Overnight Mail

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Office of the Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D. C. 20554

Re: *In the Matter of Policy and Rule Concerning the Interstate, CC Docket 96-61 Interexchange Marketplace Implementation of Section 254(g) of the Communications Act of 1934, As Amended*

Dear Mr. Caton:

Enclosed please find the original and twelve copies of the **Comments of the Public Utilities Commission of Ohio** in the above-referenced matter. Please return a time-stamped copy to me in the enclosed stamped, self-addressed envelope

Thank you for your assistance in this matter.

Respectfully submitted,

Steve Nourse

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AEH/kja

Enclosure
cc: Janice Myles, Common Carrier Bureau
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Before the

FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace Implementation of Section 254(g) of the Communications Act of 1934, As Amended	))))))	CC Docket 96-61

INITIAL COMMENTS OF THE PUBLIC UTILITIES COMMISSION OF OHIO

EXECUTIVE SUMMARY

The PUCO recommends that the FCC's general separation requirements must be more specific. The PUCO submits that, to prevent the individual states' ratepayers from subsidizing LEC out-of-region ventures, more specific separation requirements are necessary. The PUCO's recommended additions will effectively prevent LECs from gaining an unfair competitive advantage in the interstate, interexchange market, and will ensure that the LEC's market power will be effectively separated from its affiliate's power.

BACKGROUND

The Public Utilities Commission of Ohio (PUCO) hereby submits its initial comments pursuant to the Federal Communications Commission's (FCC's) Notice of Proposed Rulemaking (NPRM) in CC Docket No. 96-61 (In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace and Implementation of Section 254 (g) of the Communications Act of 1934, as amended). Initial comments concerning Sections IV, V, and VI of the NPRM are due on or before April 19, 1996. Below we are commenting on Section V.

SECTION V: SEPARATION REQUIREMENTS FOR INDEPENDENT LOCAL EXCHANGE CARRIER AND BELL OPERATING COMPANY PROVISION OF "OUT-OF-REGION" INTERSTATE, INTEREXCHANGE SERVICES.

On March 25, 1996, the FCC released its NPRM in the above-captioned proceeding. In this proceeding, the FCC requests public comment concerning, among other issues, whether the FCC should modify or eliminate the separation requirements (which are set forth in the Fifth Report and Order in CC Docket 79-252) as a condition for non-dominant treatment of an independent local exchange carrier (LEC) affiliate's provision of interstate, interexchange services originating outside of the LEC's local exchange areas. The FCC also seeks comment on whether, if the FCC modifies or eliminates these separation requirements for non-dominant treatment of an independent LEC affiliate's provision of interstate, interexchange services originating outside the LEC's local exchange areas, it should also apply the same requirements to a Bell Operating Company (BOC) affiliate's provision of out-of-region interstate, interexchange services.

In this NPRM, CC Docket 96-61, the FCC specifically asks parties to identify the separation requirement or requirements that they believe should be modified or eliminated and offer support for their positions. In addition, the FCC asks parties to comment on whether there is a possibility of cost-shifting or other anti-competitive conduct that could result if the separation requirements are modified or eliminated and, if so, how the FCC can or should address such conduct.

Consistent with our comments in CC Docket 96-21 (See Attachment A), *In the Matter of Bell Operating Company Provision of Out-of-Region Interstate, Interexchange Services,* the PUCO believes that modification or elimination of the separation requirements as they apply to LEC interexchange affiliates would result in cost-shifting and possible anti-competitive behavior. The PUCO's experience over the last ten years of regulating BOC and other telephone company affiliates has revealed that to achieve true separation between the LEC and its affiliate, it has been necessary to order progressively more specific separation requirements. The PUCO believes that the general requirements as currently applied by the FCC allow room for interpretation by the affected carriers, and may result in certain advantages to the BOC affiliates which the competitors do not have. Specifically, the PUCO asserts that, in order to prevent the idividual states' ratepayers from subsidizing BOCs' out-of-region ventures, additional specific separation requirements are necessary. In fact, the PUCO would like to point out that most of Ohio's independent LECs are subject to Rate of Return Regulation. As such, these companies have an incentive without specific separation requirements, to load the costs of any out-of-state ventures on their local rate payers.

Thus, in order to guard against such behavior, we would propose that the FCC adopt the specific safeguards set forth in our comments in CC Docket 96-21 in this docket. Those safeguards are summarized below:

- The affiliate must maintain separate books of account and must satisfy its debts to the LEC in the same manner as available to other entities under like conditions.

- The affiliate must not jointly own transmission or switching facilities with the exchange telephone company, and shall not receive technical resources and equipment from the LEC, unless such resources and equipment are also made available to any unaffiliated provider of functionally similar services or equipment under like conditions by the LEC.

- The affiliate must obtain any exchange telephone company services at tariffed rates and conditions. In those instances where the affiliate requests service pursuant to tariffs providing for individual contract pricing, the affiliate shall obtain those services at rates and terms no more favorable than those available to any unaffiliated provider of functionally similar services or equipment, and the contract must include all the material terms, the contract must be executed prior to or simultaneously with the transaction, and it must be filed with the FCC.

- The majority of the affiliate's directors must not also be directors or employees of the involved LEC. In addition, the LEC must employ separate officers and personnel, and all benefits which the affiliate and the involved LEC provide to their respective employees must be accounted for and paid for by their respective employers. The affiliate shall not receive from the involved LEC any proprietary information, other than that information that is made available at the same interval to any unaffiliated provider of functionally similar services or equipment.

CONCLUSION

The PUCO urges the FCC to adopt the comments herein. In closing, the PUCO wishes to thank the FCC for the opportunity to file comments in this docket.

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Dated: April 18, 1996

Before the

FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Bell Operating Company Provision of Out-of-Region Interstate, Interexchange Services	))))	CC Docket 96-21

EXECUTIVE SUMMARY

INITIAL COMMENTS OF

THE PUBLIC UTILITIES COMMISSION OF OHIO

The following is a summary listing of recommendations the Public Utilities Commission (PUCO) submits the Federal Communications Commission should adopt in the above-captioned proceeding:

- Prior to classifying BOC affiliates as non-dominant carriers, the general separation requirements must be more specific and include structural separation requirements. The PUCO recommends specific additions to the FCC's existing requirements.

- It is premature to treat BOCs as nonregulated affiliates under the FCC's joint cost rules and affiliate transaction rules for exchange carrier accounting purposes during this interim period, and the PUCO does not support this proposal.

- BOCs which do not create separate affiliates, or which fail to meet the proposed separation requirements recommended by the PUCO, should be treated as dominant carriers.

- The PUCO supports the non-dominant treatment of out-of-region, interstate, interexchange service for BOC affiliates, similar to the regulatory treatment of AT&T, if the FCC adopts the above PUCO recommendations.

The PUCO submits that its recommended separation requirements and regulation of a BOC affiliate for accounting purposes, will prevent the individual states' ratepayers from subsidizing BOC out-of-region ventures; will effectively prevent a BOC from gaining an unfair competitive advantage in the interstate, interexchange market; and will ensure that a LEC's market power is effectively separated from the affiliate's power. Finally, treating a BOC as dominant when it does not create a separate affiliate, or fails to meet the proposed separation requirements recommended by the PUCO, will prevent a BOC from gaining any unfair competitive advantage, either through unreasonably discriminatory practices or cross-subsidization that could arise because of its ownership and control of local exchange facilities.

Before the

FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Bell Operating Company	)	CC Docket 96-21
Provision of Out-of-Region	)	
Interstate, Interexchange	)	
Services	)	

INITIAL COMMENTS OF

THE PUBLIC UTILITIES COMMISSION OF OHIO

The Public Utilities Commission of Ohio (PUCO) hereby submits its initial comments pursuant to the Federal Communications Commission's (FCC's) Notice of Proposed Rulemaking (NOPR) in CC Docket No. 96-21 (In the Matter of Bell Operating Company Provision of Out-of-Region Interstate, Interexchange Services). Initial comments are due on or before March 13, 1996.

INTRODUCTION AND BACKGROUND

On February 14, 1996, the FCC released its NOPR in the above-captioned proceeding. In this proceeding, the FCC requests public comment concerning whether the Bell Operating Companies (BOCs) should be regulated as dominant or non-dominant carriers with respect to the provision of out-of-region services. The

FCC's NOPR tentatively concludes that, at least for now, if a BOC creates a separate affiliate to provide out-of-region, interstate, interexchange services (including interLATA and intraLATA services), and if the affiliate satisfies the conditions the independent LECs are currently required to fulfill (which are set forth in the Fifth Report and Order in CC Docket 79-252), then the affiliate will be classified as a non-dominant carrier.
To qualify for non-dominant status, the FCC proposes that the affiliate must: (1) maintain separate books of account; (2) not jointly own transmission or switching facilities with the BOC local exchange company; and (3) obtain any BOC exchange telephone company services at tariffed rates and conditions. In its upcoming interexchange proceeding, the FCC intends to consider whether it may be appropriate to modify or eliminate the separation requirements in order for some or all LECs to qualify for non-dominant treatment in the provision of out-of-region interstate, interexchange services.

The FCC further seeks comments on whether a BOC affiliate providing out-of-region, interstate, interexchange services should be treated as a nonregulated affiliate for BOC accounting purposes. Finally, the FCC tentatively concludes that if a BOC directly or through an affiliate that fails to comply with these separation requirements, provides out-of-region interstate, interexchange services, those services will be regulated as dominant carrier offerings.

DISCUSSION (III. ANALYSIS, NOPR p. 5)

In its Report and Order released on October 23, 1995, the FCC found that AT&T lacked market power in the interstate, domestic, interexchange telecommunications services market, and granted AT&T's motion for reclassification as a non-dominant carrier in this market. In the Matter of Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier, FCC 95-427. AT&T, as a dominant carrier, was subject to price cap regulation and was required to file tariffs on 14, 45, or 120 days' notice. Further, as a dominant carrier, AT&T was required to obtain FCC approval in advance to 1) construct a new line or extend a line; 2) to acquire, lease or operate any line and 3) to discontinue, reduce or impair service. As a non-dominant carrier, AT&T is free from price regulation (under either price caps or rate-of-return regulation), and may file tariffs on one day's notice, without cost support, with a presumption of lawfulness. Non-dominant carriers are automatically authorized to extend service to any domestic point and to construct, acquire, or operate any transmission lines, as long as they obtain FCC approval for the use of radio frequencies.

While not commenting on the FCC's conclusions in the AT&T docket, the PUCO believes that it would be consistent to classify BOC affiliates operating in the out-of-region, interstate, interexchange market, similarly to AT&T if the FCC adopts the additional specific safeguards identified below. The PUCO submits that non-dominant status should not be granted to these BOC affiliates unless the general separation requirements proposed by the FCC are more specific. The PUCO's experience over the last ten years of regulating BOC and other telephone company affiliates has revealed that to achieve true separation between the LEC and its affiliate, it has been necessary to order progressively more specific separation requirements. The PUCO believes that the general requirements as currently proposed by the FCC allow room for interpretation by the affected carriers, and may result in certain advantages to the BOC affiliates which the competitors do not have. Specifically, the PUCO asserts that, in order to prevent the individual states' ratepayers from subsidizing BOCs' out-of-region ventures, additional specific separation requirements are necessary.

Therefore, the PUCO recommends that <u>prior</u> to classifying RBOC affiliates as non-dominant, the affiliates be required to comply with the following changes to the safeguards outlined in the FCC's NOPR (recommended additions are underlined):

The FCC's first condition requires the affiliate to "maintain separate books of account." The PUCO submits that this condition be expanded as follows: (1) the affiliate must, "maintain separate books of account, <u>and must satisfy its debts to the BOC</u>

in the same manner as available to other entities under like conditions."

The FCC's second condition requires the affiliate to "not jointly own transmission or switching facilities with the exchange telephone company." The PUCO submits that this condition be broadened as follows: (2) the affiliate must, "not jointly own transmission or switching facilities with the exchange telephone company, and shall not receive technical resources and equipment from the BOC, unless such resources and equipment are also made available to any unaffiliated provider of functionally similar services or equipment under like conditions by the BOC."

The FCC's third condition requires the affiliate to: (3) "obtain any exchange telephone company services at tariffed rates and conditions." The PUCO agrees that as long as services are not available outside of tariffed rates, this requirement is sufficient. However, if services are also available outside of tariffs, i.e. contracts, then the PUCO maintains that the third condition be modified as follows: the affiliate must (3) "obtain any exchange telephone company services at tariffed rates and conditions; in those instances where the affiliate requests service pursuant to tariffs providing for individual contract pricing, the affiliate shall obtain those services at rates and terms no more favorable than those available to any unaffiliated provider of functionally similar services or equipment, and the contract must include all the material terms, be executed prior to or simultaneously with the transaction, and be filed with the FCC."

The PUCO further recommends that structural separation is necessary for a BOC affiliate to qualify for non-dominant treatment. The PUCO maintains that structural separation will ensure against abuse of the relationship between the BOC and its affiliate. Therefore, a fourth condition is recommended, as follows: (4) The majority of the affiliate's directors must not also be directors or employees of the involved BOC. In addition, the BOC must employ separate officers and personnel, and all benefits which the affiliate and the involved BOC provide to their respective employees must be accounted for and paid for by their respective employers. The affiliate shall not receive from the involved BOC any proprietary information, other than that information that is made available at the same interval to any unaffiliated provider of functionally similar services or equipment."

The PUCO maintains that these additional safeguards will effectively minimize the BOCs' ability to gain any unfair competitive advantage in the interstate, interexchange market, ensure the effective separation of BOCs' and affiliates' market power, and minimize the potential for cross subsidization of BOC out-of-state ventures. Additionally, more specific requirements will ease the states' abilities to monitor compliance with the requirements. Therefore, the PUCO believes that a BOC affiliate should be classified as non-dominant in the out-of-region interstate, interexchange market <u>only after</u> these specific requirements have been met.

Further, the PUCO does not support the FCC's proposal to treat BOCs as nonregulated affiliates under the FCC's joint cost rules and affiliate transaction rules for exchange carrier accounting purposes. The PUCO maintains that since the entrance of BOCs into interexchange service is uncharted regulatory territory, there is a need to have BOC accounting regulated in order to monitor whether accounting abuses occur.

In support of its conclusion, the PUCO cites the Joint Federal/State Audit of the Ameritech Telephone Operating Companies' ("AOCs") transactions with their affiliate, Ameritech Services, Inc. ("ASI"). The joint audit team's objective was to evaluate compliance with the FCC's affiliate transaction rules, and specifically, to determine whether ASI's costs were properly identified and allocated to regulated and nonregulated accounts. The audit team found that, in many cases, Ameritech did not provide or could not produce sufficient documentation to allow a determination of whether the costs associated with ASI services provided to the AOCs had been properly allocated between regulated and nonregulated operations. In other cases, the audit team concluded that Ameritech had not properly allocated such costs. As a result, a Consent Decree was entered into by the FCC, the PUCO, the Public Service Commission of Wisconsin, and the Ameritech Operating Companies (Consent Decree Order, Released June 23, 1995, AAD 95-75). Pursuant to the Consent Decree, the FCC and the state commissions agreed to refrain from pursuing enforcement actions against the AOCs, and Ameritech agreed to make serious and substantial changes to ASI's documentation regarding affiliate transactions accounting and reporting practices.

The PUCO believes that the findings of the joint audit team support the PUCO's position that BOC affiliates should be regulated for accounting purposes, at least during this interim period. The PUCO maintains that the individual states' regulated ratepayers may end up subsidizing the BOCs' unregulated ventures, and that treating BOCs as regulated affiliates under the FCC's joint cost rules and affiliate transaction rules for exchange carrier accounting practices will ensure a means of monitoring whether such abuses occur.

Finally, the PUCO agrees with the FCC that BOCs that do not create separate affiliates or fail to meet the separation requirements should be treated as dominant carriers to prevent a BOC from gaining any unfair competitive advantage, either through unreasonably discriminatory practices or cross-subsidization.

CONCLUSION

While agreeing that BOC affiliates should be classified similarly to AT&T for regulatory purposes, the PUCO recommends that, prior to classifying affiliates as non-dominant carriers, the general separation requirements proposed by the FCC must be more specific and include structural separation. The PUCO submits that to prevent the individual states' ratepayers from subsidizing BOC out-of-region ventures, more specific separation requirements are necessary. The PUCO's recommended additions will effectively prevent a BOC from gaining any unfair competitive advantage in the interstate, interexchange market, and will ensure that the LEC's market power will be effectively separated from the affiliate's.

Further, the PUCO believes it is premature to treat BOCs as nonregulated affiliates under the FCC's joint cost rules and affiliate transaction rules for exchange carrier accounting purposes during this interim period, and does not support this proposal. The PUCO submits that, unless a BOC affiliate is regulated for accounting purposes, the individual states' regulated ratepayers may end up subsidizing the BOCs' unregulated ventures.

Finally, the PUCO agrees that BOCs which do not create separate affiliates, or which fail to meet the proposed separation requirements recommended by the PUCO, should be treated as dominant carriers to prevent a BOC from gaining any unfair competitive advantage, either through unreasonably discriminatory practices or cross-subsidization that could arise because of its ownership and control of local exchange facilities.

In closing, the PUCO wishes to thank the FCC for the opportunity to file comments in this docket.

Respectfully submitted,

The Public Utilities
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Dated: March 12, 1996